



# NRI MARRIAGES IN INDIA - ISSUES AND CHALLENGES

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## ABSTRACT

This research paper focuses on the issues and challenges related to NRI marriages in India. Firstly, the definition on the abbreviation NRI is stated in this paper; later on, the allowed participants in, and the reasons for rise in such marriages are stated in a very brief manner. Then the issues and challenges in such a marriage, which form the centrepiece of this paper are explained – how marital discord ensues after a fairytale wedding, how one spouse (usually an NRI male) deceives and abandons his wife (generally an Indian female), how women face other difficulties in foreign nations related to adjustment and employment, and how, for no substantial reason, they are abandoned by their spouse, or worse still, divorced only after a few months of solemnization of marriage. Laws applied to NRI marriages and disputes therein are also explained in some detail in the third chapter of this paper. Finally, two possible solutions are suggested. The first is the enforcement of Article 15 (3) of the Constitution through the spreading of awareness and assistance of the National Commission for Women, since in most cases women are the victims. The second is the creation of concrete legislations in the sphere of Private International Law by taking help of international conventions such as CEDAW, ICCPR, ICESCR and UDHR, which can govern trans-jurisdictional disputes, and also throw light on what law is to be applied to provide remedy to the victims of such sham NRI marriages. A single codified law in this regard, however, is difficult to create, since elements of Private International Law are scattered in our laws. Both solutions however, depend on the changes which society must be ready to make. Awareness regarding NRI marriages and acceptance of mistakes and a wrong mindset is necessary, so as to create laws which are solid and effective.

*Keywords- Overseas Citizens, Marital Harmony, Foreign Exchange, Fundamental Freedom, Principle of Comity.*

## RESEARCH METHODOLOGY

### Scope and objective(s) of this research paper:

The purpose of this study is to learn more about the newly emerging trend of NRI marriages in India. The laws which are applied to disputes in such marriages and their effectiveness have also been mentioned, along with the issues and challenges which arise in such marriages. Case laws, wherever relevant, have been cited.

### Research methodology:

For the purposes of this paper, secondary sources of information such as articles and other publications on the internet have been relied upon. The authors of these sources have been duly acknowledged in footnotes wherever their texts have been relevant.

### Division of chapters:

This paper has been divided into the following chapters:

1. *Introduction*
2. *Issues and Problems in an NRI Marriage*
3. *Laws and Remedies Related to Such Marriages*
4. *Suggestions*
5. *Conclusion*

### Research questions:

There are 4 questions which have been dealt with in this paper, as follows:

1. What are the issues/problems which arise in such a marriage?
2. What laws are applicable to disputes in such marriages and to what extent are they effective?
3. What are the current remedies for a victim in such marriages?
4. Are there any other solutions for such victims?

## Hypothesis:

Participation in NRI marriages has increased greatly in recent years, as the persons who agree to such a marriage are attracted by the proposition of residing in a foreign country, leading a luxurious lifestyle and other concerns which are not necessarily based on love and affection or care for one another. Practical considerations are sometimes given supreme importance, such as the possibility of enhancement of the family's status or financial standing in society. The allure for *fetching* an NRI spouse is too much for the people to resist, it seems. But there are many problems which arise in such marriages too – fraud and deceit on part of one spouse (generally the husband) is common, ill-treatment of the wife by the husband, jurisdictional issues (which court is competent to hear the case), consequent remedies which should be given to the victim, are some of the legion issues and challenges which anyone participating in an NRI marriage has to be ready for. Hence, awareness regarding the possible dangers of such a marriage needs to be spread amongst the people; they need to be informed of their rights, and laws governing disputes in such marriages need to be checked for loopholes, if any, and issues of jurisdiction arising in such cases need to be dealt with clearly by such laws.

## Method of citation:

The Bluebook method of citation (19<sup>th</sup> Edition) has been taken as the standard for this research paper.

## INTRODUCTION

**Prologue:** The focus of this research paper is on the *issues and challenges* that pop up *in an NRI marriage*. But before we jump straight to that, it is imperative that we understand some basic concepts related to this kind of marriage. We will look at the definition of *who is an NRI and what is an NRI marriage*. With a recent surge in the propensity for such a marriage, people are more and more attracted by its surface benefits, but often become victims of unforeseeable consequences later. Problems of jurisdiction and law arise in such cases, and the Courts cannot quickly resolve such disputes. This paper will attempt to explain the reasons behind such a marriage, the issues which arise in such a marriage, the laws which apply to and govern disputes in such a marriage and the remedies and possible solutions available to the victim(s) in an NRI marriage.

## Definition of “NRI”:

The abbreviation NRI stands for **Non-Resident Indian**. Legally, it has not been given an express definition under any statute, but the **Foreign Exchange Management Act (FEMA) of 1999 (Act 42 of 1999)** defines only a **person resident in India**, as follows:

*A person who has lived in India for a minimum of 182 (one-hundred and eight-two days) in the last financial year and who comes or resides in India for any reason/purpose [is a person resident in India].<sup>1</sup>*

The FEM Act, 1999 silently defines an NRI as a person who is *not resident in India*. He or she is an Indian citizen and holds the Indian passport, but usually lives in a foreign country.

Other similar abbreviations are **PIO** or **Person of Indian Origin** which means a foreign citizen who also bears the Indian passport, or has or had grandparents who live or lived in India, or has a spouse who is an Indian.

Another such abbreviation is **OCI** which expands to **Overseas Citizen of India**. This replaced the term **PIO**, and has been mentioned in the Citizenship (Amendment) Act of 2005.<sup>2</sup>

**An NRI marriage** is essentially a marriage in which one or both of the parties are of Indian origin, but later on migrate to a foreign country, or one in which both live in a foreign country and want to marry under Indian laws.<sup>3</sup>

For the sake of clarity, only the **following pairs of individuals can participate in an NRI marriage**:

1. NRI male and an Indian female, or
2. NRI female and an Indian male (occasionally), or
3. Indian husband and wife who later migrate to a foreign nation either together or separately, or
4. NRI spouses marrying under Indian laws within India or a foreign country, or
5. An Indian male or female marrying a foreigner under Indian laws within India or another country.<sup>4</sup>

There are certain **reasons** why people find the prospect of **participating in an NRI marriage** so alluring. These are:

1. To live in a foreign country, and lead a luxurious lifestyle,
2. Pursuing personal aspirations (applies only to some people),
3. Going to a foreign country to get better work and wages,
4. Dishonest motives of the NRI spouse who seeks to cheat and defraud his or her Indian counterpart.<sup>5</sup>

<sup>1</sup> *Concept of Non-Resident Indian Marriages & Legal Issues - A Detailed Study:*

[http://shodhganga.inflibnet.ac.in/bitstream/10603/26528/10/10\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/26528/10/10_chapter%203.pdf) (Visited on 27 August, 2017).

<sup>2</sup> Y. Srinivas Rao, J, *NRI Marriages – Issues and Challenges with Special Reference to Custody of Children*, (Aug. 06, 2017), <https://articlesonlaw.wordpress.com/2017/08/06/nri-marriages-issues-and-challenges-with-special-reference-to-custody-of-children/>.

<sup>3</sup> *Concept of Non-Resident Indian Marriages & Legal Issues - A Detailed Study:*

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<sup>4</sup> *Supra* n. 2 at p. 2.

<sup>5</sup> *Supra* n. 3 at pp. 130-133.



It should be noted however, that these reasons will not be dealt with in much detail, as the scope of the paper is limited to the issues and challenges in an NRI marriage, and not the catalysts for such a marriage.

## ISSUES AND PROBLEMS IN AN NRI MARRIAGE

Now, we shall deal with the **first research question** which is related to **the issues and problems which arise in an NRI marriage**. There are some NRI marriages which are not catastrophes and which have led to the well-being and happiness of the individuals involved in it. But of course, cases of fraud and deceit, abandonment and violence have been recorded and known to have occurred in such marriages too. Almost in all cases, only the Indian female spouse is a victim of such actions on part of the NRI male spouse. The word “victim” is used to emphasize the ill-treatment meted out to such women. The usage of the word “victim” will become clearer later. For now however, we will see the issues which arise in such a marriage:

1. **An NRI marriage is usually entered into without any actual intention of ensuring marital harmony.** Call it selfishness or greed, but this is a fact which is true for both men and women who participate in an NRI marriage. The NRI spouse (usually a male in Indian cases) abandons the wife after getting the amount of dowry; on rare occasions, the female spouse may immediately leave her husband’s company after reaching foreign shores. For such people, marital commitment is not a priority. Personal desires overwhelm marital obligations.<sup>6</sup>

2. In a foreign nation, **acquiring the status of a permanent resident is very difficult.** For example, in the United States of America, spouses bearing a H4 visa are excluded from gainful employment, and don’t receive a Social Security Number either. Without this, they cannot open a bank account or obtain a driver’s licence; so, if one is not employed and working, then one can be deported back to his or her country of origin for not having either the legal right or legal status to stay in the host country.<sup>7</sup>

3. **The sudden change in lifestyle**, though alluring at first, is too much for one spouse to take. That is made more troublesome because of **the drastic change in culture**. In a foreign nation, everything is different, and in many cases, one spouse cannot adapt to the change in lifestyle, or to the way his or her partner is used to living. This creates rifts and tensions between the husband and wife, and consequently, between the two families involved in the marriage.<sup>8</sup>

4. There is always **a risk of abandonment or violence** at the hands of the NRI spouse (the male, in general), who may be cruel towards the wife, or even their children (if any). He may threaten the wife or the children, or actually cause them injury.<sup>9</sup>

<sup>6</sup> Rashmi Banwala, *NRI Marriages*, LEGAL SERVICES INDIA (Oct. 31, 2014), [http://www.legalservicesindia.com/article/print.php?art\\_id=1723](http://www.legalservicesindia.com/article/print.php?art_id=1723).

<sup>7</sup> *Supra* n. 2 at p. 3.

<sup>8</sup> *Supra* n. 6 at p. 4.

<sup>9</sup> *Supra* n. 2 at p. 2.

These are some of the issues which arise in an NRI marriage. As for the problems, it can be said that they far outweigh the advantages. As has been stated above, **the woman is usually the “victim”** in such a union. These very real situations explain why:

1. An Indian female is married to an NRI male, but is not taken to the foreign country to live there with him. He abandons the wife and never comes back to her. His family members deny the bride any help whatsoever.
2. The wife of Indian origin is physically and mentally tortured by her husband in the foreign country. Her children are taken away from her, and she has no option but to escape from her husband and go back home.
3. The Indian wife arrives in the new country, waiting at the airport for her husband, only to keep waiting, and later realizes that he is not coming to take her to her new home. The worst-case scenario is when the woman does not have the legal permission to stay in that country, and is totally dependent on her husband for learning the ropes and adapting to the new way of life in the new country.
4. The woman finds out that her husband is not who he claims to be. She is defrauded by him and/or by his family members into believing that he has a certain job, position, financial standing, immigration status etc. This is done just to make her marry him.<sup>10</sup> The following are the reasons why fraudulent NRI marriages take place:
  - ~ To conceal actual financial status, educational background,
  - ~ To find an easy method to migrate to a foreign land, and take one's family along,
  - ~ To use the NRI spouse's money for oneself,
  - ~ To obtain permanent residence in a foreign country (for example – to obtain a *Green Card* in the US – often called a *marriage of convenience*)<sup>11</sup>,
  - ~ The fact that the law cannot easily provide a solution to such cases (jurisdictional issues) etc.
5. The wife is not given maintenance in India as her marriage to the NRI husband has already been dissolved in the foreign country.

<sup>10</sup> *Supra* n. 3 at pp. 157-160.

<sup>11</sup> *Ibid*, 163-164.

There are also problems which are unique to these marriages, such as:

1. Language barrier – the resident Indian spouse who is going to a foreign country needs to know the language of that country, otherwise it is very tough for him/her to adapt to the new circumstances.
2. The resident Indian spouse is completely dependent on the NRI spouse for everything – from getting to know the new region to obtaining gainful employment, which is not granted in all cases. Proper legal permission to stay in and/or work in the country is essential. This degrades the morale of the spouse new to the foreign country.<sup>12</sup>

A relevant case here is that of **Neerja Saraph v Jayant V. Saraph**<sup>13</sup> in which the appellant, after being married to the respondent who was a qualified Doctorate in Computer Hardware and working in the USA, was later on abandoned by him when he sent her a letter which was an annulment petition filed in an American Court, all within 4 – 5 months of her marriage which was solemnized on 6<sup>th</sup> August, 1989. She had relinquished her job in India and was patiently waiting for the respondent. She had even applied for a visa, but was not granted one. The respondent never replied again, nor came back to her. He just severed all connections with the appellant.<sup>14</sup>

In his judgement for this case, **Justice R.M. Sahai** laid down certain guidelines to protect women in such cases:

*“Although the current case is one which comes under the sphere of Private International Law and is difficult to adjudge upon, the Indian legislature should consider enacting a law similar to the Indian and Colonial Divorce Jurisdiction Act, 1940, as was enacted by the UK then to deal with such matters. As for practical use and feasibility, these rules or guidelines will come in handy:*

*1. No marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court;*

*2. Provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad;*

*3. The decree granted by Indian courts may be made executable in foreign courts both on **the principle of comity** [when one country allows the laws of another country to exist and function within its borders out of respect for the friendly and harmonious relations it shares with that other country, much like allowing an overlapping of jurisdictions] and by entering into reciprocal agreements like Section 44-A*

<sup>12</sup> *Concept of Non-Resident Indian Marriages & Legal Issues - A Detailed Study:*

[http://shodhganga.inflibnet.ac.in/bitstream/10603/26528/10/10\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/26528/10/10_chapter%203.pdf) (Visited on 27 August, 2017).

<sup>13</sup> 1994 SCC (6) 461; JT 1994 (6) 488.

<sup>14</sup> *Neerja Saraph v Jayant V. Saraph*; 1994 SCC (6) 461, <https://indiankanoon.org/doc/577389/>.

*of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that Court.<sup>15</sup>*

## LAWS AND REMEDIES RELATED TO NRI MARRIAGES

An NRI marriage is different from a normal marriage in the sense that it raises questions related to the validity of the marriage, the authority of Indian Courts when compared with that of the host country's legal system and acceptance and enforcement of foreign judgements. This chapter will hence deal with the **second and third research questions** which talk about **the laws that are applicable to disputes in such marriages, their effectiveness and the remedies available therein.**

An NRI marriage can be solemnized under the **Foreign Marriage Act, 1969<sup>16</sup>** which lays down the conditions for marriage to be followed by both the parties in Section 4:

*A marriage between the parties one of whom at least is a citizen of India may be solemnized under this Act by or before a Marriage Officer in a Foreign country, if, at the time of the marriage, the following conditions are fulfilled, namely:*

- (a) Neither party has a spouse living,*
- (b) Neither party is an idiot or a lunatic,*
- (c) The bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage, and*
- (d) The parties are not within the degree of prohibited of relationship:*

*Provided that where the personal law or a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship.<sup>17</sup>*

<sup>15</sup> *Supra* n. 2 at p. 9.

<sup>16</sup> *Supra* n. 2 at p. 4.

<sup>17</sup> *The Foreign Marriage Act, 1969 – Bare Acts in India*, LEGAL SERVICE INDIA (July 21, 2012, 11:59 AM), <http://www.legalserviceindia.com/issues/topic341-section-4-conditions-relating-to-solemnization-of-foreign-countries.html>.



Section 14 of this Act talks about the **certificate of marriage**<sup>18</sup>:

*(1) Whenever a marriage is solemnized under this Act, the Marriage Officer shall enter a certificate thereof in the form specified in the Third Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book, and such certificate shall be signed by the parties to the Marriages and the three witnesses.*

*(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the certificate shall be deemed to the conclusive evidence of the fact that a marriage under this Act has been solemnized, and that all formalities respecting the residence of the party concurred previous to the marriage and the signature of witnesses have been complied with.*

Section 17 (6) of this Act talks about the **registration of foreign marriages**<sup>19</sup>:

*A marriage registered under this section shall, as from the date of registration, be deemed to have solemnized under this Act.*

Section 15 of this Act speaks of the **validity of foreign marriages in India**, and states that such marriages solemnized under this Act shall be good and valid in the eyes of law.

Aside from the Foreign Marriage Act, 1969, the other Acts under which an NRI marriage can be solemnized are:

1. The Hindu Marriage Act, 1955,
2. The Special Marriage Act, 1954,

And any other personal law or custom governing the spouses in regard to marriage.

These are the laws which govern an NRI marriage, but more often than not, dispute suits in foreign Courts are filed, and issues related to the applicable law crop up.

English Law faced this dilemma related to conflicting jurisdictions once upon a time. It was called the “Conflict of laws,” but later on the English law makers came up with something called “Private International Law” which dealt with the questions of jurisdiction and enforcement of foreign orders passed by foreign courts. India however, is yet to develop this class of legislation called *Private International Law*.<sup>20</sup> Therefore, in cases related to NRI marriages, Indian Courts turn to Sections 13, 14 and 44 A of the Code of Civil Procedure, 1908.

<sup>18</sup> *Ibid*, (July 21, 2012, 11: 51 AM), <http://www.legalserviceindia.com/issues/topic331-section-14-certificate-of-marriage.html>.

<sup>19</sup> *Supra* n. 18: <http://www.legalserviceindia.com/issues/topic328-section-17-registration-of-foreign-marriages.html>.

<sup>20</sup> *Supra* n. 12 at p. 186.

Section 13 of the CPC, 1908, states the course of action **when a foreign judgement is not conclusive or final**, and lays down certain exceptions when Indian Courts can intervene and give their own judgement related to the case. The petitioner (or in such cases, the one who has been ordered by the foreign court) has to initiate and enforcement proceeding and wait for the Court's judgement. After the proceedings are done with, the Court can pass a judgement for the enforcement of the foreign order through an **execution petition**. Thus, a foreign judgement is turned into a domestic judgment so as to allow its enforcement.<sup>21</sup>

Once the Court is satisfied that the foreign court was competent to give the decision in the case, then the Indian Court will not further scrutinize the foreign judgment, but if it is vice versa, then the foreign decision will not be given any weight.<sup>22</sup>

Section 14, CPC, 1908, speaks of certain assumptions in regard to foreign judgements. A certified copy of the foreign judgement produced before the Court will be considered to have been passed by a foreign Court of competent jurisdiction, but it is not an absolute piece of evidence. It can be questioned on the grounds of jurisdiction.

Section 44 A, CPC, 1908, talks about the execution of foreign orders passed by courts in reciprocating territory. The term **reciprocating territory** includes those countries outside India which have been designated so by the Indian Central Government for the application of this section. Section 44 A of the Code of Civil Procedure is quicker when compared to Section 13 of the same Code when matters of conflicting jurisdiction arise, as it allows for the direct adaptation and enforcement of foreign judgements by using the instrumentality called an **execution petition** without engaging in unnecessary preliminary case proceedings. This depends on two essentials:

1. Section 13 of the CPC must be completely applicable, i.e., all the conditions from 13(a) to 13(f) should be satisfied.
2. There should be a harmonious allegiance or understanding of the principle of comity between the two nations whose jurisdictions are in question.<sup>23</sup>

The case of **Satya (Smt.) v Teja Singh**<sup>24</sup> is an example here. In this case, the appellant filed an appeal in the Supreme Court of India after her husband had acquired a divorce order/decree from a court in Nevada, USA. He had been looking for a convenient option to divorce his wife Satya. The Court held that the elements of **factum** (separation of wife and husband) and **animus** (intention to abandon spouse) must be present to grant validity to the divorce. Since the respondent had moved to Nevada just to get a convenient divorce from his wife, and later moved out of Nevada, the divorce is without those two elements, and hence is not valid in the eyes of the law in India.

<sup>21</sup> *Supra* n. 2 at p. 7.

<sup>22</sup> *Supra* n. 12 at p. 189.

<sup>23</sup> *Supra* n. 12 at pp. 189-191.

<sup>24</sup> AIR 1975 SC 105.

The Court stated that the principles of Private International Law are drastically different in different territories or countries of the world, hence, the understanding of Private International Law must be founded upon the genuineness of divorce and our notion of justice. The Court agreed that there is an absence of Indian legislation with regard to Private International Law, but also stated that in matters related to matrimonial and familial disputes, Sections 13 and 14 of the CPC, 1908, will be given prime consideration and effect.<sup>25</sup>

Even the Indian Penal Code, 1860, has provisions for matters which invoke different jurisdictions. These are:

1. Section 3 of the IPC states that if a person commits an offence outside the territorial limits of India, the nature of which is such which can be tried by an Indian law, then that person can be tried and by use of the provisions mentioned in the Indian Penal Code as if the offence had been committed within the jurisdictional boundaries of India itself.<sup>26</sup>

2. Section 108 A of the IPC reads thus verbatim:

*Abetment in India of offences outside India – a person abets an offence within the meaning of this Code who, in [India], abets the commission of any act without and beyond [India] which would constitute an offence if committed in [India].<sup>27</sup>*

Another remedy available to the wife party to an NRI marriage in cases of marital discord and ill-treatment is mentioned under Section 10 of the Passports Act 1967. This provision provides for the seizure and revocation of the passport of the NRI husband if he doesn't present himself in the Court when a summons notice is sent to him. This was held in the case of **Rajiv Tayal v Union of India and Others**.<sup>28</sup>

<sup>25</sup> *Supra* n. 12 at pp. 199-200.

<sup>26</sup> K. D. GAUR, TEXTBOOK ON INDIAN PENAL CODE 5 (5<sup>th</sup> ed., Universal Law Publishing 2016).

<sup>27</sup> *Supra* n. 22 at p. 189.

<sup>28</sup> (2005) 124 DLT 502.

## SUGGESTIONS

We have seen some of the laws which are applied to resolve disputes which arise in cases of faulty NRI marriages. But what are the other possible solutions that can be provided to the aggrieved persons in such cases?

1. **Article 15 (3)** of the **Constitution of India** speaks of a Fundamental Right:

*Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth: (3) Nothing in this article shall prevent the State from making any special provision for women and children.*<sup>29</sup>

As we can see, the Indian Constitution itself provides a Fundamental Right which grants special privileges to women in the sense that the government or State can make specific provisions for their safety and security. Strict and proper implementation of this Fundamental Right can be done by taking the help of the National Commission for Women or NCW, as was created by the legislation called **National Commission for Women Act, 1990**, for the better protection of the rights of women.<sup>30</sup>

There are many avenues of help available to women, but men are not guilty in all faulty cases related NRI marriages. Therefore, sensitization of the society at large as to the problems faced by Indian men (with regard to frivolous and malicious suits filed against them for the alleged offence of say, domestic violence, or an offence of cruelty under Section 498 A of the Indian Penal Code, 1860<sup>31</sup>) should also be done.

Creating awareness amongst families of all classes about the positive and negative aspects of NRI marriages can also be planned. If a country-wide Census can be conducted every ten years, then surely some manpower can be spared to execute this awareness campaign as well. It would behove the parties to a possible NRI marriage to know of their rights under various legislations such as Sections 13 and 14 of the CPC, 1908, or Section 10 of the Passports Act, 1967. General awareness about what to do and, more importantly, to not do, should be spread with regard to verification of both the spouses' identities, actual marital status and other pertinent details which may possibly change their decision about participating in the marriage and solemnizing it. Much trouble can thus be avoided.

2. **Concrete legislations on Private International Law-** India is a signatory to CEDAW (Convention for the Elimination of all forms of Discrimination Against Women) which was adapted by the UN General Assembly in the year 1979, and was ratified (signed and agreed to) by India in 1993.<sup>32</sup> This Convention is considered the International Bill of Rights for Women, and covers all spheres of civil, political, economic, social, public and private lives of women, and also places emphasis on the need to safeguard the reproductive rights of women. It talks of traditions and cultural practices, and also patriarchy and its effects which gives rise to a regressive mindset.

<sup>29</sup> GOPAL SANKANARAYANAN, THE CONSTITUTION OF INDIA 14 (9<sup>th</sup> ed., Eastern Book Company 2016).

<sup>30</sup> HUMAN RIGHTS: A SOURCE BOOK 168 (ARJUN DEV et al., National Council of Educational Research and Training 1996).

<sup>31</sup> PADALA RAMA REDDI, INDIAN PENAL CODE, 1860 251 (24<sup>th</sup> ed., Asia Law House 2016).

<sup>32</sup> Sheila Jayaprakash, *The Right to be Equal*, THE HINDU, April 23, 2000.



Article 1 of CEDAW reads as follows:

*For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>33</sup>*

The problem with the implementation of this Convention is that member States can limit the spheres in which they want to apply the provisions of it. India, though a signatory and member State, is very lax when it comes to the application of the principles and rights envisioned in this Convention. The government of India says that it does not wish to interfere in the private lives and customs of people, which are guided by tradition and historical practice. But this inaction itself is the cause for the discrimination against women.

If the nation has signed to such an international convention, then it should use its provisions as a lens to interpret national laws which safeguard the rights of women. There are other conventions too, to which India is a signatory, such as the UDHR (Universal Declaration of Human Rights), ICCPR (International Covenant on Civil and Political Rights) and ICESCR (International Covenant of Economic, Social and Cultural Rights). The aims and objectives of these treaties and conventions can be used to lay down provisions related to Private International Law.

Even the Supreme Court in the case of Vishaka in 1997, held that international conventions can be used to interpret our own laws and that by becoming a signatory to CEDAW, India had committed itself to an international standard or model of rights for women. So, why not use CEDAW and other conventions to frame legislations related to Private International Law? The provisions which resemble this are scattered throughout different statutes of Indian Law, and not codified in a single place, which makes the application of this specific law very difficult. Legislations which answer the question of applicable jurisdiction, the correct law(s) which can be applied and the acceptability of foreign decrees passed by foreign Courts are required, so as to make adjudication in cases of faulty NRI marriages easier and expeditious. But one thing must be kept in mind that while such legislations are being formed, the law-makers should not become overly zealous with respect to empowering women, same as they should not give in to patriarchal norms of society. Such a balance is difficult to attain, but is necessary. The plight of not only women who are victims, but those few men too, should be taken into consideration, and laws should be made to alleviate such agony of the people who suffer in such marriages.

<sup>33</sup> *Supra* n. 30 at p. 72.

## CONCLUSION

There are many issues which pop up when an NRI marriage takes place. Granted that not all of them become nullities, but a majority of them are nothing but sham marriages, thought out and designed to cheat the unsuspecting and often oblivious spouse. This leads to the complete breakdown of both the marriage, and the spouse so cheated. These marriages often happen out of frivolous and ulterior considerations – luxury, wealth and greed. Marital responsibilities are non-existent for the spouse who is so inclined. The only way to lessen instances of sham NRI marriages is to first spread awareness amongst the gullible public about the positive and negative outcomes of such a marriage. They need to be made aware of their rights, and that's where the first suggestion comes in. The Indian Constitution provides for a Fundamental Right which allows women to gain the benefits of special laws made for them under Article 15 (3). But it is not that only women are made targets in NRI marriages. Some men too suffer under the burden of malicious suits filed against them by women, which is detrimental to marital harmony. The second suggestion regarding the creation of suitable legislations within the realm of Private International Law is viable only if India, as a signatory country to international conventions such as CEDAW, UDHR, ICCPR and ICESCR, adapts the vision embodied in these conventions and does so while keeping a balance between pro-women and patriarchal tendencies. Tilting towards the extremes of either is not something which is desirable, as it will surely hinder the making of a neutral legislation on Private International Law, and NRI marriages as a consequence. Scattered bits and pieces of relevant law only complicate matters of jurisdiction and applicability. Codification of laws related to Private International Law is of the essence. The only challenge to all of these possible solutions is the unrelenting, patriarchal mindset of our society, which, until the time it is made to yield to reason, will not allow awareness to spread and change to occur with respect to NRI marriages and the laws which, perhaps inadequately, govern it.

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